Remarks

Claims 1-2, 5-7, 9-11, 22-26 and 33-41 are currently pending in the Application and withdrawn Claims 3-4 and 8 remain as they depend from elected Claim 1, which, for the reasons stated in this response, is expected to be allowed by the Examiner. Hence, Applicants expect withdrawn Claims 3-4 and 8 to be allowed when the Examiner finds Claim 1 to be allowable.

35 U.S.C. §103(a) rejection

Claims 1, 2, 5, 6, 7, 9-11, 22-26 and 33-41 stand rejected under 35 U.S.C. §103(a) as being obvious over Applicant's Admitted Prior Art (Figs. 1, 2A and 2B in applicant's patent application) in view of Browning.

This is the sixth non-final official action to issue with respect to this application. Yet the Examiner fails to follow the requisites established by the USPTO for making an obviousness type rejection. See the KSR v. Teleflex Examination Guidelines of October 10, 2007 and 37 CFR 1.104.

The Examiner cites two sources of prior art. Applicant's Admitted Prior Art shows passive retroreflectors which operate in the time (or temporal) domain to modulate a a reflected beam 12r with data. The Examiner also cites a US patent to Browning. The Examiner points to a passage in Browning which relates to Browning's Fig. 7. Browning's Fig. 7 is reproduced below:

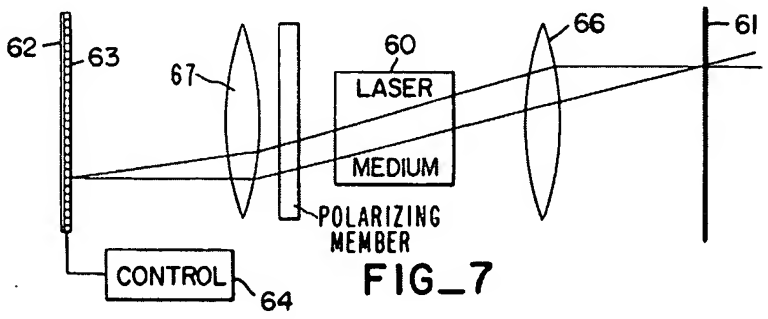

FIG_7

Note the following about Browning's retroreflectors. First, they are located at the focal planes of lenses 66 and 67 (See Browning, col. 8, ll. 12-16). Second, retroreflector 61 is half silvered so that is passes the scanning beam (See Browning, col. 7, ll. 55-56). Third, Browning tells the reader that by "means of the ferroelectric ceramic lattice shutter array 63, the Q of the resonant cavity between reflectors 61 and 62 is spoiled except at a localized region determined by control means 64. The localized region of high Q may then be scanned across the ferroelectric ceramic shutter array according to a predetermined scanning raster by control means 64 so that the resonant modes of the laser medium follow the scanning raster producing a concentrated scanning laser beam output at the half silvered mirror 61" (see Browning, col. 8, ll. 17-26). Clearly, Browning teaches how to spatially manipulate the output beam emanating from half silvered mirror 61.

So, Browning operates in the spatial domain to cause a laser beam to scan a surface (for the purpose of storing information thereon). Browning's scanning beam emerges from the half silvered mirror 61.

Applicant's Admitted Prior Art (Figs. 1, 2A and 2B in applicant's patent application) depict a retroreflector which can be used in a communication system to modulate an incident beam from a laser 10 as a parallel reflected beam 12r. In the embodiment of Fig. 2A, one of two mirrors is moved to switch (or modulate) the reflected beam 12r on and off. The depicted retroreflector operates in the time domain.

The Examiner suggests some un-described mix of Browning's Fig. 7 and Applicant's Admitted Prior Art (Figs. 1, 2A and 2B in applicant's patent application) "for the purpose of transmitting the scanning laser output". Well, Browning's device of Fig. 7 already "transmits the scanning laser output" so it does not need any modification to do that. And the last thing that a person skilled in the art would want to do to Applicant's Admitted Prior Art (see, for example, Figs. 1, 2A and 2B in applicant's patent application) would be to make those retroreflectors scan (have a "scanning laser output"). First, scanning operates in the spatial domain. A retroreflector is, be definition, "a device that reflects

light back along the incident path, irrespective of the angle of incidence." So by definition, it does not (and should not) scan at all. It reflects light "back along the incident path". That is what a retroreflector does and that is exactly what the retroreflectors of APAA in applicant's patent application do. They do not scan by definition. So, with all due respect, it makes no sense to modify a retroreflector to "scan". And if it were modified to scan, that would disable its ability to modulate (in the time domain) the return beam 12r. The return beam 12r follows the incident beam 12 back to its point of origination and it would not return (and the modulation would be lost) if it were to "scan". So a person skilled in the art would not add scanning to the retroreflectors of Figs. 1, 2A and 2B in applicant's patent application based on the teachings of Browning or any other teaching. It just makes no sense to do that.

Also, Browning teaches that the light leaving Browning travels in a direction dictated by the pixel (or, pixels) activated on his rear mirror. By reciprocity, therefore, the only external light that could enter Browning and emerge without loss, would be light that is precisely directed into the opposite direction as the light emanating from Browning. However, Browning must have advance information of the specific incident angle of the external light, so that the correct pixel(s) on his rear mirror could be activated in advance of the incident light to be retro-reflected. Browning does not function as a retro-reflector, since a retro-reflector functions without *a priori* knowledge of the precise direction from which the incident light illuminates it. So the Browning device is not a retroreflector. Browning teaches scanning, not retroreflecting. Browning uses retroreflectors for the mirrors of his laser, but his device is not a retroreflector.

Furthermore, one cannot tell from the Examiner's analysis what the proposed combination of Fig. 7 of Browning and Figs. 1, 2A and 2B in applicant's patent application is supposed to look like. Browning has a laser, but Fig. 1 already has a laser, so Browning isn't needed for that. Is the Examiner suggesting that one or both of Browning's retroreflectors 61 and 62 be replaced with the retroreflector of say Fig. 2A or some other figure of the APAA? Which of Browning's retroreflectors and why? How is

the retroreflector of Fig. 2A supposed to be disposed at the focal plane of Browning's lenses? How does that work? How does it become half silvered as taught by Browning? And why replace Browning's perfectly good retroreflectors with the more complicated device of Fig. 2A in the first place? The bottom line is that there is absolutely no reasonable rationale to do that!

It is clear that the Examiner is just using applicant's claims as a road map to the prior art as opposed to considering what the prior art really teaches.

The KSR v. Teleflex Examination Guidelines of October 10, 2007 provide that "When making an obviousness rejection, Office personnel must therefore ensure that the written record includes findings of fact concerning the state of the art and the teachings of the references applied. In certain circumstances, it may also be important to include explicit findings as to how a person of ordinary skill would have understood prior art teachings, or what a person of ordinary skill would have known or could have done. Factual findings made by Office personnel are the necessary underpinnings to establish obviousness." There is an utter dearth of such factual findings in the present Official Action as to what the skilled person would allegedly have done based on the cited art. There is nothing more than a conclusory statement that a skilled person would somehow combine this art in some unknown and unexplained way to make a retroreflector device scan when scanning is the last thing in the world that the retroreflector device needs as scanning would render it unable to do the job for which it was designed.

With respect to claim 1, that claim uses the term "fabry-perot".

The rejections of claims 1 and 22 discussed on page 2 of the Official Action are, with all due respect, without merit for the reasons given above. Similarly, the rejections of these claims dependent claims is also without merit.

Turning to independent claim 6, the rejection, if it is based on APAA and Browning, it is improper for the reasons given above.

The rejection of claim 6 is also improper since the Examiner has not made clear just what prior art is being cited against this claim. For example, on page 2 of the Official Action, there is a sweeping statement that all the claims are rejected based on APAA and Browning. But when the Examiner justifies the rejection of claim 6 on page 3 of the official action, she only discusses APAA. So on just what basis is claim 6 being rejected? The Applicant should not have to speculate as to just what is the Examiner's rationale for rejecting a claim. See 37 CFR 1.104.

Also the Examiner asserts with respect to claim 6 that Figs. 4A and 4B of the APAA disclose a retroreflective device. That is not true. Those figures depict a grating, not a retroreflective device!

With respect to dependent claims 7, the Examiner asserts that Figs. 4A and 4B disclose a corner cube. That is also not true. Those figures depict a grating, and neither a retroreflective device nor a corner cube.

The rejection of other dependent claims pose similar problems. The Examiner should not be mischaracterizing the APAA. That is totally unfair to Applicant.

The rejection of claim 6 and its dependent claims is without merit.

Turning to independent claim 33, the rejection, if it is based on APAA and Browning, it is improper for the reasons given above.

The rejection of claim 33 is also improper since the Examiner has not made clear just what prior art is being cited against this claim. For example, on page 2 of the Official Action, there is a sweeping statement that all the claims are rejected based on APAA and Browning. But when the Examiner justifies the rejection of claim 33 on page 5 of the official action, she only discusses APAA. So on just what basis is claim 33 being rejected? The Applicant should not have to speculate as to just what is the Examiner's rationale for rejecting a claim. See 37 CFR 1.104.

Furthermore, claim 33 specifically recites that "the first reflective surface and the second reflective surface are parallel to each other in the first position and the second position". The Examiner asserts that this feature appears in Fig. 1. That is not true. In Fig. 1 the two reflective surfaces are depicted as being orthogonal to one another and not "parallel" as claimed.

As stated above, the Examiner should not be mischaracterizing the APAA. Similar issues arise at least some of the rejections of this claim's dependent claims.

Conclusion

The rejection in this sixth non-final official action as again without merit. Reconsideration and allowance of all the claims are respectfully solicited.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being filed electronically with the United States Patent and Trademark Office on

28 April 2009
(Date of Transmission)

Stacey Dawson
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